

Decision 05-02-009 February 10, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Southern California Edison Company (U 338-E) for a Permit to Construct Electrical Facilities With Voltages Between 50 kV and 200 kV: Viejo System Project.

Application 03-03-043  
(Filed March 21, 2003)

**OPINION GRANTING INTERVENOR COMPENSATION  
TO NOPE, INC. FOR SUBSTANTIAL CONTRIBUTION  
TO DECISION 04-07-027**

This decision awards N.O.P.E, Inc. (NOPE) \$29,795.65 in compensation for its substantial contribution to Decision (D.) 04-07-027. This award is \$34,999.09 less than NOPE's request of \$64,794.74. The bulk of the disallowance is attributable to attorney's fees requested for preparation of a stay, an application for rehearing and other pleadings after D.04-07-027 issued, and for miscellaneous expenses that are not compensable through the Commission's intervenor compensation program or which lack adequate support.

**I. Background**

This proceeding concerns the request of Southern California Edison Company (Edison) for a Permit to Construct (PTC) the Viejo System Project (the Project), including a new substation in the City of Lake Forest and certain new electric transmission facilities through the City of Mission Viejo (Mission Viejo). The latter include modification of 3.1 miles of existing 66 kV subtransmission lines to allow for an additional overhead 66 kV circuit. The current 66 kV lines

are located within an existing SCE right-of-way that also contains 220 kV transmission lines. D.04-07-027 finds the Project appropriately sought a PTC, rather than a Certificate of Public Convenience and Necessity (CPCN), because the new lines will operate at distribution levels. D.04-07-027 certifies the Final Mitigated Negative Declaration (Final MND) for the Project, as modified in that document, and grants the PTC.

Prior to the issuance of D.04-07-027, environmental review occurred in accordance with the California Environmental Quality Act (CEQA), leading to release of the Draft MND on March 10, 2004 and the subsequent 30-day review and comment period, which closed on April 9, 2004. Other milestones included a prehearing conference (PHC) in Mission Viejo on March 25, 2004, following release of the Draft MND, the April 8, 2004 Assigned Commissioner's scoping memo, and public participation hearings (PPHs) in Mission Viejo on May 25, 2004.

This proceeding remains open to consider a request for stay and temporary restraining order and an application for rehearing, both filed by NOPE on September 24, 2004. In a separate proceeding, Rulemaking (R.) 04-08-020, the Commission is examining whether it should make any revisions to its policy framework on electromagnetic fields (EMFs) or to implementation of that policy. The Commission's current policy sanctions a "Prudent Avoidance" or "low-cost/no-cost" approach and is the basis for electric utility EMF Management Plans.

The compensation pleadings filed in this proceeding consist of NOPE's Notice of Intent (NOI) to claim compensation and its subsequent compensation request, Edison's opposition to the request, and NOPE's reply.

## **II. Requirements for Awards of Compensation**

The intervenor compensation program, enacted by the Legislature in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings.<sup>1</sup> The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient NOI to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate "significant financial hardship." (§§ 1802(g), 1804(b)(1).)
5. The intervenor's presentation must have made a "substantial contribution" to the proceeding, through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)

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<sup>1</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code, and all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-3 above are combined, followed by separate discussions of the financial hardship showing (Item 4) and then Items 5-6.

### **III. Procedural Issues**

As noted above, the PHC in this matter was held on March 25, 2004. NOPE's NOI was filed on April 26, 2004, 22 days after the PHC, and was in compliance with the 30-day deadline as the 30<sup>th</sup> day fell on a Saturday. On May 11, 2004, Administrative Law Judge (ALJ) Malcolm found NOPE to be a customer under the Public Utilities Code, based on its status as a California nonprofit public benefit corporation representing utility customers in the area of the Project.<sup>2</sup>

NOPE was incorporated in November 2003, several months after Edison filed the PTC application. NOPE's articles provide that: "The specific purpose of this corporation is for educational purposes to inform about the detrimental aspects of overhead electrical transmission lines near residential and public areas." (Second Article.) This is the most specific statement of NOPE's organizational purpose; its Bylaws simply authorize activities lawful under § 501(c)(3) of the Internal Revenue Code.

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<sup>2</sup> Though NOPE did not attach its Articles of Incorporation or its Bylaws to its NOI, it provided copies upon the request of the assigned ALJ and the ALJ overseeing the intervenor compensation program. We have placed copies of both documents in the formal file.

Though neither the Articles nor Bylaws expressly provide that NOPE may represent residential customers, we will broadly construe the statement as encompassing such representation, consistent with our past interpretations of § 1802(b).<sup>3</sup> Thus, we confirm the ALJ's ruling that NOPE meets the customer requirements of § 1802(b).

NOPE filed its request for compensation on September 14, 2004, which is within the requisite 60 days of the issuance of D.04-07-027. Accordingly, NOPE has satisfied three of the four requirements necessary to make its request for compensation. NOPE did not make a showing of financial hardship in its NOI, but instead deferred that issue to its request. We review the showing below.

#### **IV. Financial Hardship**

An intervenor seeking compensation must show that, without undue hardship, it cannot pay the reasonable costs of effective participation in the proceeding. To make this showing, a participant representing consumers or a representative authorized by a customer must make a financial disclosure to the Commission, under an appropriate protective order. In the case of a

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<sup>3</sup> Section 1802(b)(1) identifies three categories of customer representation. The third category, relevant here, requires that a group or organization be "authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers."

Recent Commission decisions have awarded compensation to two other "Category 3" groups, Kottinger Ranch Homeowners Association (Kottinger Ranch) and Save Southwest Riverside County (SSRC). (See D.02-05-005, D.02-11-024, and D.03-10-035.) The bylaws of SSRC specifically articulate a purpose to advocate for residential ratepayers; the articles/bylaws of Kottinger Ranch do not. However, as the Commission has explained elsewhere, we have adopted an expansive approach to customer eligibility in favor of associations and organizations that advance the public interest directly but may represent narrowly defined ratepayer interests only indirectly.

“Category 3” customer such as NOPE, significant financial hardship is demonstrated by showing that the economic interest of individual members is small compared to the overall costs of effective participation. (§ 1802(g).) The Commission has determined that under the statute, the fundraising abilities of a group are irrelevant to the calculation of financial hardship and that, likewise, substantial donations need not be offset against claimed costs of participation.<sup>4</sup>

NOPE states that the compensation it seeks “is several orders of magnitude larger than the annual costs for an average residential ratepayer” and that NOPE is “acting as a representative of its members in their capacities as residential ratepayers.” (Request, pp. 4-5.) This analysis is erroneous, according to Edison. Instead, Edison argues that “[t]he proper analysis is not to compare electric rates with the costs of participation, but rather to compare the true economic benefits NOPE hoped to achieve through intervention ... with the costs of participation.” (Edison response, p. 4.) Edison refers to NOPE’s PHC presentation, which sought to broaden the proceeding to include undergrounding of all existing transmission lines in the utility right-of-way. The PHC presentation attempted to value the benefit to affected real property owners. Though the scope was not expanded, Edison overlooks the fact that NOPE continued its participation regarding whether or not the project should be pursued.

In two recent transmission line CPCN proceedings (TriValley (A.99-11-025) and Valley-Rainbow (A.01-03-026)), the Commission found that the

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<sup>4</sup> See D.02-11-024, which awards intervenor compensation to Kottinger Ranch. See also D.02-05-005, D.03-10-035 and D.04-02-026, which make intervenor compensation awards to SSRC.

litigation interests of the respective intervenors, Kottinger Ranch and SSRC, were much broader than the individual real property interests of their members. We reach the same conclusion here. NOPE satisfies the test of financial hardship as stated in the statute for the applicable category of intervenor.

## **V. Substantial Contribution**

In evaluating whether a customer made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.<sup>5</sup>

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the

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<sup>5</sup> D.98-04-059, 79 CPUC2d, 628 at 653.

Commission, the customer's participation substantially contributed notwithstanding the rejection of its recommendations.

With this guidance, we turn to NOPE's claimed contributions to D.04-07-027, the only decision to issue in this proceeding to date. NOPE's efforts in this proceeding after D.04-07-027 issued (e.g., filings made to stay the decision and to seek rehearing at the Commission) could not contribute to the underlying decision in any way. Whether those efforts meet criteria for intervenor compensation must be assessed at a future date, once a decision resolving those matters has issued. This is our standard practice, in keeping with our long-term interpretation of § 1804(c). (See Rule 76.72.) Likewise, compensation for participation in the new EMF rulemaking, R.04-08-020, must await a decision in that proceeding and is not compensable here.

From a procedural standpoint, NOPE had one clear success. NOPE points out, it persuaded the Commission to reverse its initial determination not to hold any PPHs, and the Commission then scheduled afternoon and evening sessions in Mission Viejo. D.04-07-027 notes that local council members and former members spoke at the PPH, and that "about 250 local residents attended and 71 spoke, most either opposing the project or proposing transmission line undergrounding through Mission Viejo." (D.04-07-027, slip op. p. 5.) NOPE's subsequent procedural efforts failed. The Commission rejected NOPE's request for evidentiary hearing and also rejected NOPE's argument that Edison's application should be reviewed under the more rigorous standards applicable to more complex CPCN proceedings, rather than the standards applicable to PTC proceedings. Likewise, the Commission rejected NOPE's argument that CEQA review should have been conducted via an environmental impact report, rather than a MND. D.04-07-027 discusses each of these contentions and does not find



any of them to be meritorious. NOPE does not explain how these unsuccessful efforts could be characterized as significant contributions to our decision-making, and we conclude there is no basis to award compensation for them.

Substantively, NOPE's position ultimately failed, since the Commission not only approved the project, but also did not require undergrounding of any portion of it. NOPE is correct, however, that the Commission sought record development on NOPE's undergrounding position and incorporated some of NOPE's suggested mitigation measures in the Final MND. Indeed, the scoping memo, which issued shortly after the PHC, states the Assigned Commissioner's interest "in NOPE's proposal to underground those portions of the project that follow the flat portions of the right of way." (Request, p. 5.) D.04-07-027 also acknowledges that NOPE filed comments on the Draft MND, as did the City of Mission Viejo, and that in response the Commission modified the draft "to incorporate some of the mitigation measures advocated by NOPE" and the City of Mission Viejo. (D.04-07-027, slip op. p.10.) Though Edison contends NOPE made no substantial contribution to the Commission's decision-making, the text of D.04-07-027 does not support Edison's argument.

NOPE also claims at least partial responsibility for the agreement between the City of Mission Viejo and Edison to place before the voters a ballot measure for a local assessment to fund undergrounding of the proposed new 66 kV distribution lines. NOPE includes a copy of the agreement with its compensation request. This is helpful, since D.04-07-027 does not mention the agreement. The short dissent filed by Commissioner Lynch acknowledges the agreement was reached but questions its lawfulness. The agreement explains a means to assess public payment for environmental mitigations beyond those found necessary in this proceeding and concerns an undergrounding option the Commission

ultimately did not approve. However, we have already explained that NOPE's record development on undergrounding contributed to our decision-making, though we did not adopt NOPE's position. This record development may well have influenced the negotiations that led to the agreement. Whatever the virtues or validity of the agreement, its substance concerns the terms of a local ballot assessment, a matter wholly outside our jurisdiction. Moreover, the ballot assessment was not necessary to effectuate D.04-07-027 or to enable development of the Project, as approved. Since we cannot find that negotiation and execution of the agreement contributed significantly to D.04-07-027, we reject this part of NOPE's claim. We have no need to reconcile differences between NOPE and Edison about the degree to which NOPE actually contributed to the agreement.

Finally, NOPE argues that its participation in this proceeding influenced the Commission's decision to issue R.04-08-020 as a forum for review of current EMF policy and its implementation. While the OIR does not mention NOPE explicitly, it does state, "In a number of electric transmission and substation projects recently approved by the commission there is consistently strong public interest in EMF issues." (EMF OIR, slip op., p. 1.) We agree that NOPE made a substantial contribution in this regard.<sup>6</sup>

In summary, we find that NOPE made a substantial contribution to D.04-07-027 on one procedural issue. NOPE's substantive participation was productive, in two respects: (1) NOPE assisted in development of the environmental record that led to adoption of the final MND necessary for

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<sup>6</sup> We have made a similar determination previously. See D.02-06-014, which amends the Golden State Power Cooperative for contributions in several applications that led to the Commission's issuance of an Order Instituting Investigation.

approval of the Project; and (2) NOPE's participation, together with the participation of intervenors in other proceedings, cumulatively influenced us to issue R.04-08-020.

After we have determined the scope of a customer's substantial contribution, we then look at whether the compensation requested is reasonable. Because some of NOPE's efforts resulted in a significant contribution, the discussion below makes appropriate adjustments.

## VI. Reasonableness of Requested Compensation

NOPE requests \$64,794.74<sup>7</sup> for its participation in this proceeding, as follows:

<b><u>Attorney Fees</u></b>			
Stephen M. Miles	2003-2004	169.3 hours @ \$325/hour	\$55,022.50
	2003-2004 @ ½ rate	30 hours @ \$162.50/hour	\$ 4,875.00
		<b>Fees subtotal</b>	<b>\$59,897.50</b>
<b><u>Expenses</u></b>			
Overnight mail delivery & messenger service			\$ 200.12
NOPE board members out of pocket for printing, postage, park rental, and signs for rally and public hearings			\$ 2,515.00
Postage			\$ 380.00
Frank Ury – website and travel			\$ 800.00
San Francisco hearing expenses			

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<sup>7</sup> NOPE's request seeks compensation in the amount of \$64,668.44. However, in response to informal queries from the ALJ overseeing the intervenor compensation program NOPE indicated that the request for overnight mail deliveries should be \$126.30 greater than its original request of \$73.82--this adjustment increases the total request.

Room and air travel			\$ 798.56
BART			\$ 62.00
Food and gas			\$ 141.56
		<b>Expenses subtotal</b>	<b>\$ 4,897.24</b>
	<b>TOTAL</b>		<b>\$ 64,794.74</b>

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

To assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request. We have recognized that some proceedings lend themselves to this kind of quantification, while in others, quantification of benefits is more difficult. NOPE does not refer to this productivity requirement directly and provides no breakdown of time or expenses on an issue-by-issue basis. NOPE should have done so.<sup>8</sup> We recognize that the procedural and substantive contributions it made belong to those categories of issues whose value to ratepayers, though real, is not easily monetized – but this does not obviate an intervenor's responsibility to address

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<sup>8</sup> The Intervenor Compensation Program Guide available from the Public Advisor and on the Commission's website provides detailed information to intervenors, including checklists and templates for use in the required filings (both NOI and request for compensation).

productivity. We will overlook NOPE's omission this time because it is clear the Commission and ratepayers benefited from NOPE's focus on mitigation measures and local EMF concerns. Although NOPE represented a local, rather than a statewide interest, the issues NOPE identified and developed are relevant statewide.

We note that the documentation included with NOPE's request consists of (1) the declaration of its attorney, Stephen M. Miles (Miles), which subtotals the hours he billed during five consecutive time periods and includes a request for expenses for overnight and messenger delivery services; (2) Miles' more detailed billing records, with some redacted text, and (3) a list of NOPE's other expenses.<sup>9</sup> In response to informal inquiries by email from the ALJ overseeing the intervenor compensation program, NOPE provided additional information, which we have placed in the correspondence file for this proceeding: (1) an explanation for most of the redacted text in Miles' billing records; (2) the dates for the overnight and messenger deliveries, copies of the relevant invoices, and a revised total for the cost; and (3) additional description and cost breakdown for NOPE's other expenses.

Miles' hours: NOPE subtotals the hours Miles billed for each of five consecutive time periods: "prehearing contribution" (50.9 hours); "PPH contribution" (24.8 hours); "pre-decision contribution" (40.6 hours); "post-decision contribution" (53.0 hours); and "request for contribution" (30.0 hours).

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<sup>9</sup> In future, if NOPE believes redactions are necessary, NOPE should file and serve a motion for leave to file the unredacted text under seal and tender a copy of unredacted text in a sealed envelope to the Commission's Docket Office.

NOPE requests compensation for all time in the first four categories at full professional rate. NOPE requests compensation for time billed in the last category at one half the professional rate.

We adjust NOPE's claim to deduct all of the time billed as "post-decision contribution" (53 hours) since this time was spent on pleadings related to the stay and application for rehearing of D.04-07-027, both of which will be resolved in future. From the remaining time for which NOPE seeks full professional rate, we deduct the time spent on activities that are not compensable. We disallow this time because it was not devoted to matters that made a substantial contribution to our decision-making, but concerned administrative matters outside the scope of this proceeding (e.g., discussion with a client about the terms of representation or about invoices), specific issues outside the scope of this proceeding (e.g., the ballot assessment negotiations), or activities that are not compensable by parties (e.g., preparing public speakers for PPHs or other venues<sup>10</sup>). Where we have estimated the time devoted to a given activity, we have done so because Miles' time records do not report the actual time spent on it but list it as one of several activities performed during the hours billed. Each estimate is our best assessment of a reasonable expenditure of time, based on the information provided and our experience with the demands of litigation at the Commission.

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<sup>10</sup> As we recently had cause to remind another intervenor: "PPHs provide members of the public who are not parties to the proceeding an opportunity to offer their comments to the Commission. We do not award compensation for the time spent preparing for PPHs." (D.04-08-041, slip op., p. 12 citing D.96-08-040, 67 CPUC2d 562, 577.)

The specific adjustments are: 0.20 hour (estimated) on 12/19/03 for discussion about the modified attorney/client representation agreement; 0.40 hour on 1/13/04 for undisclosed activities (removed at Miles' request); 0.30 hour on 4/01/04 for communications with client about fund raising and a January invoice; 1.00 hour (estimated) on 04/27/04 for attending mediation meeting with Edison and Mission Viejo; 0.20 hours (estimated) on 6/08/04 for discussions with client about Mission Viejo initiative; 1.00 hour (estimated) on 6/29/04 for memo to client regarding public commentary at the Commission's 7/08/04 public meeting<sup>11</sup>; 1.30 hour (estimated) on 6/30/04 for speaker preparation for the 7/08/04 public meeting; and 1.20 hour during 7/06 and 7/07/04, which per Miles' email was spent on review and coordination of speeches and letters prepared for the 7/08/04 public meeting. The total adjustment is 5.6 hours.

Finally, we adjust NOPE's full time rate tallies to remove time actually spent on compensation-related activities, which should be billed at one half the professional rate: 0.30 hour (estimated) on 12/08/03 for review of intervenor compensation statutes and NOIs filed by prior intervenors; 0.90 hour on 4/16/04 for research and communication about intervenor compensation; 2.30 (estimated) hour on 4/22/04 for research and preparation of the NOI; 0.30 hour (estimated) on 4/23/04 for finalizing the NOI; 1.00 hour (estimated) on 4/28/04 regarding NOI follow-up matters; 0.30 hour on 5/13/04 for review of NOI ruling and related communication with client. We add all of this time (5.1 hours) to the time billed for preparation of the compensation request and reply (30 hours), for

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<sup>11</sup> The Commission issued D.04-07-027 at the 7/08/04 public meeting.

which NOPE has properly requested one-half the full professional rate. The new total is 35.1 hours.

The request preparation time is high compared to typical billings in relatively short proceedings with a limited number of issues. For this reason and because the filed request was incomplete in ways described above (and in the "other expenses" section, below), a further adjustment is warranted. We recognize NOPE is new to our intervenor compensation process but that does not mean ratepayers should bear additional costs. We will reduce the compensation-related part of NOPE's request by 25%, to 26.3 hours. This is consistent with the approach we took in D.03-10-056, where we reduced Kottinger Ranch's compensation-related hours because of excessive hours in connection with that claim.

Miles' rate: In determining compensation, once we have reviewed the hours claimed and made any necessary adjustments, we take into consideration the market rates for similar services from comparably qualified persons. NOPE has not sought intervenor compensation previously from this Commission and we have not had occasion to consider an appropriate hourly rate for Miles.

NOPE requests that we award Miles \$325 per hour for work performed between November 2003 and September 2004. Miles is an associate with the law firm Van Blarcom, Leibold, McClendon & Mann. He began practicing law in 1996, after receiving that year a J.D. (*cum laude*) and a M.S.L. (in environmental science and law). His declaration summarizes his experience representing private plaintiffs and local governmental bodies in various public interest litigation and transactional matters. Miles has appeared before the Commission previously in a water utility CPCN proceeding and is General Counsel to



Ramona Water Company. He is a member of the Executive Committee of the Environmental Law Section of the State Bar of California.

In evaluating the proper hourly rate, we look to the training and experience of the particular attorney, relevant market rate data, and the rates awarded to peers practicing before the Commission. We may also consider the quality of work performed by the attorney in a particular proceeding. In his declaration, Miles states that he believes the correct range for his services to be between \$275 and \$375 per hour. He also states that in 2003 the San Bernardino Superior Court awarded him attorney's fees of \$250 per hour with a 1.25 multiplier (for a total of more than \$300 per hour) for his participation in a lawsuit that commenced in 2001. The multiplier was based on the contingent fee nature of the litigation. However, a contingent fee award paid by the losing party in civil litigation does not provide a useful comparison with the Commission's intervenor fee program, which is funded by utility ratepayers in the rates they pay. Thus, Miles own support does not substantiate an award above \$250/hour.

Review of the awards the Commission has made to other practitioners indicates that the closest peers, from the standpoint of years in practice, are three who were admitted to the bar in 1997, the year after Miles. The chart below shows the awards made to these attorneys for work performed in 2003 and 2004.

<b>Name</b>		<b>Client</b>	<b>Amount Requested</b>	<b>Year Work Performed</b>	<b>Amount Awarded</b>
Osa Armi	Attorney	Save Southwest Riverside County	\$230	2003	\$230
Itzel Berrío	Attorney	Greenlining Institute	\$290	2003	\$275
Itzel Berrío	Attorney	Greenlining Institute	\$310	2004	\$300
Enrique Gallardo	Attorney	Latino Issues Forum	\$265	2003	\$265
Enrique Gallardo	Attorney	Latino Issues Forum	\$275	2004	\$275

Osa Armi, the only attorney in private practice, has requested and received the lowest hourly rate, which is the rate actually billed her clients. As the chart illustrates, when hourly fee ranges develop for practitioners with similar experience (measured by years in practice), such ranges may reflect the differences in the underlying requests (in addition to other factors already mentioned) since, while the Commission may determine it is reasonable to set a lower rate than requested, it does not award a higher rate.

Considering both the support supplied by Miles himself, the rates we have awarded other counsel with similar training and experience, and the level of proficiency demonstrated in this proceeding, we conclude that \$250 per hour is a fair rate for Miles for all professional hours approved. We also note that most of Miles' work occurred in 2004. The rate we adopt, \$250 per hour, is approximately 8% above the low end of the range we awarded to his peer group in 2003 and in that way comports with Resolution ALJ-184.<sup>12</sup>

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<sup>12</sup> In Resolution ALJ-184, the Commission determined to set professional rates for 2004 by 8% above 2003 rates, in most cases.

NOPE's other expenses: NOPE also requests reimbursement of \$4,897.24 in expenses. For overnight and messenger delivery services, NOPE requests \$200.12 and includes the five supporting invoices. We disallow part of the request (\$29.55 on August 17, since no documents were filed in this proceeding that month; \$62.42 on October 4, 2004, since the documents relate to NOPE's application for rehearing of D.04-07-025) and allow the rest, \$108.15.

The remaining \$4,697.12 in expenses are costs incurred by NOPE's President, Frank Ury (Ury) and other NOPE members. NOPE's inclusion of most of these expenses suggests that NOPE has misunderstood the purpose and scope of our intervenor compensation program. Because these costs are either noncompensable items or insufficiently documented (though NOPE was provided a second opportunity to substantiate them), we disallow them all. We discuss our reasons for disallowing each cost category for which NOPE seeks reimbursement below.

NOPE seeks \$2,515.00 to reimburse its board members for NOPE's incorporation costs and other expenditures they made between September 2003 and May 2004 in connection with the Commission's PHC and PPHs and with five scheduled Mission Viejo council meetings. NOPE's incorporation costs are well outside the statutory definition of "other reasonable costs." (§ 1802(c).) NOPE did not have to incorporate to participate in this proceeding, and there is no reason ratepayers should subsidize its decision to do so. The other costs in this category include: printing of several thousand flyers to publicize the public meetings; printing and photocopying of petitions bearing some 3,000 local signatures; reproduction costs for materials distributed at four homeowners meetings and postage costs for mailings to various homeowners associations; rental of a local park for a rally; miscellaneous expenses, including the cost of

beverages for the rally, paper for home computers and travel to meetings with Edison and Mission Viejo; and purchase of an EMF cell sensor and a book by Paul Brodeur entitled, "The Great Power Line Cover Up." In defense of the latter two items, NOPE's informal, supplemental submission to the ALJ overseeing the intervenor compensation program states: "Please note that officer and professional time expended in gathering EMF readings is not being sought by NOPE, Inc. as a cost." (Attachment to November 8, 2004 email from Miles to ALJ Cooke.)

NOPE has not shown how any of these expenses are "directly related to the contentions or recommendation made by a customer that resulted in a substantial contribution." (§ 1802(d).) The Commission authorized NOPE to intervene as a party on behalf of residential customers, but NOPE essentially seeks reimbursement for expenses incurred in what appears to have been either a membership drive or an effort to urge members of the public to participate on their own behalf. NOPE does not document the claimed travel to meetings with Edison and the Mission Viejo or explain how those meetings tie into its substantial contribution to this proceeding. As for the book and the EMF sensor, NOPE does not explain how these were used or why they were necessary to the formation of its position. In keeping with statutory directives, the Commission's intervenor compensation awards typically consist of reimbursement of the costs of a party's designated representatives for participation in the Commission proceeding, including hourly billings by legal counsel and any necessary subject matter experts. As discussed above, NOPE has made a case for reimbursement of most of the time billed by its attorney; the case for ratepayer reimbursement of these other costs is deficient.

NOPE seeks \$380 for signs for the park rally and other public hearings. NOPE's informal, supplemental submission explains that these costs also covered banners and other materials used to "alert the community to various hearings and meetings" between February and June of 2004. (Attachment to November 8, 2004 email from Miles to ALJ Cooke.) These costs are disallowed for the same reason we disallow the costs for flyers and similar expenses above. While we have allowed reasonable per diem costs when a party representative is obliged to be away from home for more than a 24-hour period in order to participate in a proceeding, we do not reimburse parties for incidental refreshments.

NOPE seeks \$800 for costs Ury incurred for establishment and maintenance of a website over a 14-month period (\$550) and for airfare, car rental and parking he incurred attending a February 2004 conference at the Commission on the future of power transmission in California (\$270), which was not part of this proceeding. While both categories of expenses may have been useful to NOPE (the first, for public outreach and the second, to educate its president), NOPE does not explain how either meets the requirements of § 1802(d). We disallow these expenses.

Finally, NOPE seeks over \$1,000 for San Francisco hearing expenses (i.e., room and air travel, BART, food and gas) which its informal, supplemental submission explains were the costs incurred when "[o]n July 8, 2004 six community supporters traveled to San Francisco for CPUC hearing...[t]he Commission hearing transcript can be checked for additional verification of attendance." (Attachment to November 8, 2004 email from Miles to ALJ Cooke.) These costs are noncompensable, since NOPE has no basis to claim intervenor

compensation for travel to this meeting, either as a party or on behalf of non-parties.

It is important to note that the “CPUC hearing” NOPE references was the public meeting at which the Commission issued D.04-07-047. While we have allowed reimbursement for the time a designated party representative spends listening at such a meeting, attendance is unnecessary because one can “listen” by telephone link or other means. Under Commission rules, representatives of a party may not speak during the public comments portion of the meeting, since a party has many ways of exercising its voice beforehand, in the course of the proceeding. Therefore, NOPE, as a party, had no need to travel to San Francisco on July 8.

To the extent NOPE seeks reimbursement because it enabled six individuals to speak at the meeting as members of the public (and not as members of NOPE), NOPE’s claim is likewise misplaced. The statute does not intend ratepayers at large to fund the travel costs of any customer who wishes to speak before the Commission about some agenda item. Only those who, as required by statute, file an NOI in conjunction with a particular proceeding and who comply with all other statutory requirements are eligible to seek intervenor compensation.

## **VII. Award**

As set forth in the table below, we award NOPE \$29,795.65.

<b><u>Attorney Fees</u></b>			
Stephen M. Miles	2003-2004	105.6 hours @ \$250/hour	\$ 26,400.00
	2003-2004 @ ½ rate	26.3 hours @ \$125/hour	\$ 3,287.50
		<b>Fees subtotal</b>	<b>\$ 29,687.50</b>
<b><u>Expenses</u></b>			
Overnight mail delivery & document messenger service		<b>Expenses subtotal</b>	<b>\$ 108.15</b>
	<b>TOTAL</b>		<b>\$ <u>29,795.65</u></b>

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after NOPE filed its compensation request and continuing until full payment of the award is made. The award is to be paid by Edison, the regulated entity in this proceeding.

We remind NOPE that Commission staff may audit its records related to this award. Intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. These records should identify, for example, specific issues for which compensation was requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

### **VIII. Waiver of Comment Period**

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6), the otherwise applicable 30-day period for public review comment is being waived.

### **IX. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. NOPE represents residential consumers, customers, or subscribers of Edison in the vicinity of the Project.
2. NOPE filed its NOI to claim compensation on April 26, 2004, and its request for compensation on September 14, 2004.
3. The individual economic interests of NOPE's members are small in comparison to the costs incurred in effectively participating in these proceedings.
4. NOPE's participation, in part, made a substantial contribution to D.04-07-027.
5. The reasonable hourly rate for NOPE's attorney, when compared to the market rates for persons with similar training and experience, is \$250 per hour.
6. The total of these reasonable attorney fees is \$29,687.50.
7. The total of the reasonable expenses claimed by NOPE is \$108.15.



### **Conclusions of Law**

1. NOPE has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for the approved fees and expenses of \$29,795.65 incurred in making substantial contributions to D.04-07-027.

2. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

3. This order should be effective today so that NOPE maybe compensated without further delay.

### **O R D E R**

#### **IT IS ORDERED** that:

1. N.O.P.E, Inc. (NOPE) is awarded \$29,795.65 as compensation for its substantial contributions to Decision 04-07-027.

2. Within 30 days of the effective date of this decision, Southern California Edison Company (Edison) shall pay NOPE's award.

3. Edison shall also pay interest on the award beginning November 29, 2004, at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, and continuing until full payment is made.

4. The comment period in today's decision is waived.

This order is effective today.

Dated February 10, 2005, at San Francisco, California.

MICHAEL R. PEEVEY  
President  
GEOFFREY F. BROWN  
SUSAN P. KENNEDY  
Commissioners

Comr. Grueneich recused herself  
from this agenda item and was not  
part of the quorum in its consideration.

<b>Compensation Decision:</b>	D0502009
<b>Contribution Decision(s):</b>	D0407027
<b>Proceeding(s):</b>	A0303043
<b>Author:</b>	ALJ Malcolm
<b>Payer(s):</b>	Southern California Edison Company

### Intervenor Information

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Multiplier?</b>	<b>Reason Change/Disallowance</b>
NOPE, Inc.	9/14/04	\$64,794.74	\$29,795.65	No	failure to justify hourly rate; failure to discount travel or intervenor compensation preparation time; unproductive effort/excessive hours; premature; failure to allocate by issue; undocumented costs; inappropriately claimed expenses

### Advocate Information

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Stephen	Miles	Attorney	NOPE, Inc.	\$325	2003-2004	\$250